Supreme Court, U.S.
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No. 05-237

In the

Supreme Court of the United States

NEIL SABLAN TAISACAN,

Petitioner,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of the Northern Mariana Islands

BRIEF OF THE PETITIONER

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QUESTIONS PRESENTED

1. Did the Supreme Court of the Northern Mariana Islands [hereafter "NMI Supreme court] err in ruling that the petitioner's right under the Double Jeopardy Clause of the Fifth Amendment was not violated, because, although petitioner's conviction of assault, assault and battery, and disturbing the peace arose from the same set of facts, occasion, time and place where felony counts charged were committed and the jury had first in the same proceeding found the petitioner not guilty of all such felony counts before the judge found the petitioner guilty of the misdemeanor charges, the principle of collateral estoppel does not apply?[1]

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[1] The NMI Supreme Court may have preempted the petitioner's federal rights when it changed the "Issues Presented For Review" of the petitioner from a question of a violation of the Double Jeopardy Clause of the Fifth Amendment to a violation of the Double Jeopardy Clause of the NMI Constitution. We maintain that the NMI Supreme Court had no right to change the issues for review presented by the appellant. In the appellant's [petitioner's] opening brief, the following was stated on page 4.

" ISSUES PRESENTED FOR REVIEW:

1. Did the conviction of Defendant Taisacan of assault and battery, assault, and disturbing the peace violate the Double Jeopardy Clause of the Fifth Amendment in view of the fact

2. Did the NMI Supreme Court err in ruling that the petitioner's right under the Due Process Clause of the Fourteenth Amendment was not violated when the Superior court found the petitioner guilty of assault, assault and battery, and disturbing the peace where the evidence as to the identity of the assailant was insufficient?[2]

3. Did the NMI Supreme err in ruling that the petitioner's right under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution was not violated when the Superior Court sentenced the petitioner to consecutive sentences for assault, assault and battery, and disturbing the peace where assault and assault and battery are arguably lesser-included offenses of disturbing the peace?[3]

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that the record of the trial shows that the jury's verdict of not guilty was based on the fact that the jury had a reasonable doubt that Defendant Taisacan was one of the two robbers who robbed and assaulted the victim?

2. Did the sentencing of Defendant for assault and battery, assault, and disturbing the peace for a total of 2 years violate the Double Jeopardy Clause?

3. Did the conviction of Defendant Taisacan of assault and batter, assault, and disturbing the peace violate the Double Jeopardy Clause [sic] for insufficiency of evidence."

[2] This issue is merely a rider. The main issue that really needs the attention of this Court is issue no 1.

[3] This issue is also a rider. We waive showing of reasons for granting of writ of certiorari.

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Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America [U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681] :

Section 403(a) 1

Commonwealth Code:

1 CMC §3102(a) 2
3 CMC §3102(a) 3

United States Code Service:

28 USCS §1257(3) 3

STATEMENT OF JURISDICTION

This petition for a writ of certiorari is made by reason of the fact that the NMI Supreme Court entered its decision on June 23, 2005 affirming the Superior Court's judgment of conviction of the petitioner and the decision was entered on the same day at 11:15 AM.

No petition for rehearing was filed in this case.

This Court has jurisdiction over this petition for certiorari pursuant to Section 403(a) of the Covenant To Establish A Commonwealth of the Northern Mariana Islands In Political Union With the United States of America [hereafter "Covenant"] (U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681) which states in part:

> (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the

> several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jursdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to Subsection 402(c).

On May 2, 1989, the Commonwealth Judicial Act of 1989 became effective. This law established the Supreme Court of the Northern Mariana Islands as an appellate court of the Northern Mariana Islands. See 1 CMC §3101, which states:

> There is hereby established, in the judicial branch of the Commonwealth Government, the Supreme Court of the Commonwealth of the Northern

> Mariana Islands. Admissions to the Bar are to be governed by the Supreme Court.

3 CMC §3102(a) gives appellate jurisdiction to the Supreme Court. It states:

> (a) The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth.[1]

The fifteen years having elapsed, this Court now has jurisdiction pursuant to Section 403(a) of the Covenant which makes 28 USCS §1257(3) applicable. Said statute states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may

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[1]The term "CMC" means Commonwealth Code. The Commission in the Commonwealth code comment states in part: "...It is the intent of the legislature to recognize that until the expiration of fifteen years after the enactment of Public 1-5 final decisions of the Commonwealth Supreme Court will be appealable to the United States Courts of Appeals for the Ninth Circuit Court as is provided by Section 403(a) of the Covenant, and that upon the expiration of that period all final decisions of the Supreme Court will be appealable thereafter only to the United States Supreme Court."

be reviewed by the Supreme Court as follows:

.....

(3) By writ of certiorari ... where any title, right, privilege or immunity is specially set up or claimed under the Constitution .... See *Hammerstein v. Superior Court of California,* 341 US 491, 95 L Ed 1135, 71 S Ct 820 (1951).

STATEMENT OF RELEVANT CONSTITUTIONAL PROVISIONS

The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution states in part:

> ... nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; ...

Section 1 of the Fourteenth Amendment to the U.S. Constitution which also makes the Double Jeopardy Clause applicable to the States states in part:

> ... nor shall any State deprive any person of life, liberty, or property without due process of law...

Section 501(a) of the Covenant [U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681] states in part:

> (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: ... Amendment 14, Section 1; ....

STATEMENT OF FACTS

At about 11:00 PM of October 29, 2000, Song Yong Tae was throwing trash into the trash box behind his laundry shop when two male persons came and robbed him. One grabbed him from behind. The other, holding a gun and wearing a baseball cap, was facing him. TP 39/18-21 (vol. I). Mr. Song testified that he saw the face of the person who was wearing a hat and holding a gun. TP 44/5-9 (Vol. I). His testimony shows no description of the second person who was headlocking him behind his back. According to him, the man with a hat and a gun had a long face. TP 82/24-25 (Vol. I). A few hours after the robbery, Mr. Song told Police Officer Inosinta Sound that the man with the gun was a skinny young man, and had a long face, and he was able to hold the man's skinny wrist. TP 103/1-9 (Vol. I). But Petitioner Neil Sablan had a round face, he was fat, and he had big wrists. TP 338/1-12 (Vol I).

In the early hours of October 30, 2000, the police arrested all the defendants (Baldobino Taisacan, Joaquin R. Crisostomo, and Neil Sablan Taisacan) and later their pictures were taken. TP 35/24-27 (Vol. II). On or about November 27, 2000, Mr. Song was shown photos of several persons, including those of the defendants (Baldobino Taisacan, Joaquin R. Crisostomo and Neil Sablan Taisacan). TP 21/9-27 (Vol II); TP 37/1-10 (Vol II). Mr. Song identified the picture of Joaquin R. Crisostomo as the man he saw robbing him and holding a gun on him on the night of the robbery. TP 39/10-17. He did not identify Neil Taisacan or the third defendant in the photos. TP 38/21-24 (Vol II).

However, during the trial, Mr. Song pointed to Defendant Neil Sablan Taisacan as the person who was robbing him and holding a gun on him on the night of the robbery. TP 62/10 (Vol. I).

The defendants were tried for robbery, attempted murder, theft, assault with a dangerous weapon, two counts of unlawful carrying of a firearm, criminal use of a firearm, two counts of illegal possession of a firearm, possession of a prohibited firearm, possession of a prohibited ammunition, illegal possession of ammunition, assault and battery, assault, and disturbing the peace.

The trial was held with the jury determining guilt or innocence on the felony charges, while in the

same proceeding the judge was to determine guilt or innocence on the misdemeanor charges such as assault and battery, assault, and disturbing the peace.

At the end of the trial, the jury entered verdicts of not guilty as to all felony charges against the petitioner. And then the judge entered verdicts of guilty against the petitioner on the misdemeanor charges of assault and battery, assault, and disturbing the peace.

Petitioner subsequently moved that the court vacate its judgment of conviction on the misdemeanor charges and dismiss the charges of assault and battery, assault, and disturbing the peace on the ground that such judgment of conviction violated the Defendant's right under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, made applicable to the CNMI through the Fourteenth Amendment to the U.S. Constitution. The court denied the motion.

On August 8, 2003, the court then sentenced Petitioner Neil Taisacan to one year imprisonment for assault and battery, six months for assault, and six months for disturbing the peace. All terms were to run consecutively.[2]

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[2] The petitioner is still serving that sentence. Additionally, because of this conviction, his suspended sentence in a previous conviction has been revoked and he is in jail for imprisonment for a lot longer sentence than his consecutive sentences in this case.

The petitioner timely appealed to the NMI Supreme Court his conviction, his sentence, and the court's denial of his motion to dismiss on the ground that his right to Double Jeopardy Clause of the 5th Amendment to the U.S. Constitution. On June 23, 2005, the NMI Supreme Court affirmed the decisions of the Superior Court ruling inter alia that the principle of collateral estoppel does not apply to inconsistent judgments made in the same proceeding.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE NMI SUPREME COURT IS IN CONFLICT WITH THE 6TH, 8TH, AND 11TH CIRCUITS OF APPEALS WITH RESPECT TO THE APPLICABILITY OF COLLATERAL ESTOPPEL AND WITH THIS COURT AND OTHER FEDERAL COURTS ON THE RULE ON SUFFICIENCY OF EVIDENCE.

A

Applicability of Collateral Estoppel

In a landmark decision, this Court in *Ashe v. Swenson,* 397 US 436, 25 L Ed2d 468, 90 S Ct 1189 (1970), established the applicability of the common law principle of collateral estoppel in criminal cases. This Court there said that the common law principle of collateral estoppel "is a part of the Fifth Amendment's guarantee against double jeopardy". 397 US at 442, 25 L Ed2d at 475, 90 S Ct at 1193. And where collateral estoppel "is embodied in that guarantee, then its applicability is no longer a matter to be left for state court determination within the broad bounds of 'fundamental fairness', but a matter of constitutional fact that [must be decided] through an examination of the entire record". 397 US at 442-443, 25 L Ed 2d at 475, 90 S Ct at 1194.

Collateral estoppel means simply "that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 US at 443, 25 L Ed2d at 475, 90 S Ct at 1194. In determining an issue that may or may not be covered by collateral estoppel, this Court guides us by saying:

> ... Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and

> other relevant matter, and conclude *whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.*" (Emphasis supplied)

397 US at 444, 25 L Ed2d 475, 90 S Ct at 1194.

How far in time does the first judgment from the second judgment have to be in order that collateral estoppel can be applied? This is the issue in this case.

On one hand, the CNMI Supreme Court relied on two state court cases to rule that when two judgments, one by the jury and one by the judge, are made in the same proceeding, the principle of collateral estoppel does not apply. See *Copening v. United States*, 353 A2d 305 (D.C. 1976) and *Connecticut v. Knight*, 835 A2d 47 (Conn. 2003).

On the other hand, the U.S. Courts of Appeals for the 6th Circuit, 8th Circuit, and 11th Circuit have clearly established precedents that the principle of collateral estoppel may apply to two judgments in the same proceeding.

In *Gutzwiller v. Fenik,* 860 F2d 1217 (6th Cir. 1988), the jury and the judge were involved in the same trial where the jury was to decide on the legal claim under a §1983 discrimination claim and the

judge was to decide on Title VII equitable claim. The jury found that plaintiff was discriminated by the defendants, but in deciding the Title VII claim which also required a finding of discriminatory intent, the district court judge dismissed the plaintiff's claim under Title VII finding no discrimination.

The 6th Circuit Court of Appeals, in reversing the district court, said that "when the section 1983 claim and the Title VII claim *are tried jointly, as they were here, the principle of collateral estoppel controls*." (Emphasis supplied). 860 F2d at 1333. Thus, "the trial judge was bound by the jury's express finding of liability as to Fenik and Cohen on the section 1983 equal protection claim, and was 'without power' to reach a conclusion inconsistent with that of the jury."[3] 860 F2d at 1983.

In *Lincoln v. Board of Regents of Univ. System,* 697 F2d 928, 934 (11th Cir. 1983) the 11th Circuit said "When a party has the right to a jury trial on an issue involved in a legal claim, the judge is of course bound by the jury's determination of that issue as it affects his disposition of an accompanying equitable claim."

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[3] The NMI Supreme Court attempted to distinguish this instant case from *Gutzwiller, Garza,* and *Lincoln,* supra, by saying that the jury in a criminal case does not make any findings of fact, while the jury in a civil case makes a findings of fact. We don't know how true that is, but *Ashe* has clearly commanded that the reviewing court must look to record of the entire case.

The U.S. Court of Appeals for the 8th Circuit follows the same principle that collateral estoppel applies to two inconsistent judgments in the same proceeding. See *Garza v. City of Omaha*, 814 F2d 553 (8th Cir. 1987).

The Court of Appeals of Maryland in *Galloway v. State*, 809 A2d 653 (2002), agrees in principle of the applicability of collateral estoppel in a criminal case where the jury was deciding felony charges and the judge was deciding on misdemeanor charges, except that the court couched its decision by calling collateral estoppel as inconsistent verdicts and avoiding any constitutional interpretations.

While it is true that the U.S. courts of appeals were deciding on civil cases in the above-mentioned cases, this Court in *Ashe*, supra, has clearly held with strong emphasis that there is no difference between criminal cases and civil cases when it comes to the application of the principle of collateral estoppel. This Court made that clear when it cited its previous decision in *United States v. Oppenheimer*, 242 US 84, 61 L Ed 161, 37 S Ct 68 (1916) where this Court said that "the criminal law is in unison with that which prevails in civil proceedings," and that "... the 5th Amendment was not intended to do away with what in the civil law is a fundamental principle of justice." 242 US at 88, 61 L Ed at 164.

Clearly, there is a very serious conflict between the 3 state court's decisions and the U.S. circuit courts of appeals decisions on the issue of collateral estoppel. This conflict can widen and exacerbate unless this Court steps in and decides on this issue.

The issue on Double Jeopardy guaranteed by the Fifth Amendment to the U.S. Constitution is a very important question of federal law. This Court has not yet settled the issue of whether collateral estoppel could be applied with respect to inconsistent verdicts by jury and the judge occurring in the same proceeding. And already some state courts have already gone one hundred eighty degrees away from the principles established by the U.S. circuit courts of appeals, whose decisions on questions of federal law should have been honored and followed.

Moreover, to let those state courts' rulings stand on the inapplicability of collateral estoppel on judgments made in the same proceeding makes a mockery of the principle of guilt beyond a reasonable doubt, since a jury's verdict, for instance, inferring that the accused was not present at the scene of the crime at the time it was committed would collide with judge's finding that the accused was present at the scene of the crime at the time it was committed. This situation logically puts into question whether the defendant has really been found guilty beyond a reasonable doubt.

B

SUFFICIENCY OF EVIDENCE

The CNMI Supreme Court did not cite any authority from the federal courts or even other state courts to support its decision that the petitioner's right under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution was not violated when he was convicted with insufficient evidence.

The court merely stated in simplistic way that there was some evidence, namely: (a) the victim identifed the petitioner at trial, (b) the stories of the defendants in a poker establishment shortly after the crimes were committed did not match up as to how they got there, (c) the car they drove matched the license place number an eyewitness to the getaway gave to the police, (d) At trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car.

While the NMI Supreme Court uses the language of this Court in *Jackson v. Virginia,* 443 US 307, 61 L Ed2d 560, 99 S Ct 2781 (1979) which says:

> ... the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact

> could have found the essential elements of the crime beyond a reasonable...

443 US at 319, 99 S Ct at 2789, 61 L Ed2d at 573, in reality it still clings to the past practice long rejected by this Court, which is that if there is any evidence, no matter how dubious, that the defendant is guilty, then the reviewing court will not disturb the findings of the trial court.

On the issue of identity of the robbers, the victim had the opportunity to look at the photos of all the defendants 30 days after the crime was committed. He identified the photo of co-defendant Joaquin Crisostomo as the man with the baseball cap who held a gun on him. He could not identify the person headlocking him from behind. A few hours after the robbery, he described the man with the baseball cap who held a gun on him as a skinny young man with a skinny wrist and had a long face.

The evidence which the prosecution could not refute is that the petitioner had a round face, was fat and he had big wrists.

These early descriptions of the man with the gun made by the victim himself created a reasonable doubt as to whether the victim's identification of the petitioner as the man with the gun during trial was correct.

The NMI Supreme Court's statement that the stories of the defendants as to how they got to poker establishment shortly after the crimes were committed did not match does not prove that the petitioner was the person who robbed the victim.

The court also said that the evidence that "the car they drove matched the license plate number an eyewitness to the getaway gave to the police" does not prove that the petitioner was in the getaway car, because the witness could not identify the persons inside the car. The petitioner did not own the car. There was no evidence that he was the driver of the car.

The court also said that "at trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car." This is not a correct statement of the evidence. The evidence is that the car which was parked at a poker establishment hours after the crimes were committed were taken by the police to the police station and was opened, And there they saw a revolver similar to the one used by the man with the gun. They saw a small baseball cap, similar to the one worn by the man with the gun. There was no evidence that the petitioner wore the cap except the dubious identification by the victim of petitioner as the man with the gun.

There is no doubt that the NMI Supreme Court has decided a federal question, in a way, in conflict with applicable decisions of this Court and

decisions of the 9th Circuit of Appeals where the CNMI belongs. In *Jackson,* supra, this Court said:

> ... The question of whether a defendant has been convicted upon *inadequate evidence* is central to the basic question of guilt or innocence. The constitutional necessity of proof beyond a reasonable doubt is not confined to those defendants who are morally blameless. E.g. Mullaney v. Wilbur, 421 US, at 697-698, 44 L Ed2d 508, 95 S Ct 1881 (requirement of proof beyond a reasonable doubt is not "limited" to those facts which, if not proved, would wholly exonerate the accused). Under our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar. (Emphasis supplied).

443 US at 323, 99 S Ct at 2791, 61 L Ed2d at 576.

The NMI Supreme Court's decision in this case represents a substantial departure from the decisions of this Court and those made by the 9th Circuit in *United States v. Fulbright,* 105 F3d 443 (9th Cir. 1997), *United States v. Dinkane,* 17 F3d 1192 (9th Cir. 1994), *Mikes v. Borg,* 947 F2d 353 (9th Cir. 1991), *United States v. Bishop,* 959 F2d

820 (9th Cir. 1992). *United States v. Lopez-Alvarez*, 970 F2d 583 (9th Cir. 1992).

This Court needs to clarify for the sake of the young NMI Supreme Court that the teaching of *Jackson v. Virginia*, supra, including explanation and illustration thereof, should be followed strictly.

CONCLUSION

The petitioner therefore prays that this Court grant him a writ of certiorari to the NMI Supreme Court and decide the merits of his appeal.

Dated this 17th day of August, 2005.

Respectfully submitted,

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